

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MILTON LEWIS, Jr.,
Petitioner.

v.

ROBERT HOREL, Warden,
Respondent.

No. C 08-02337 CW (PR)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

Petitioner has requested appointment of counsel in this
action.

The Sixth Amendment right to counsel does not apply in habeas
corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th
Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes
a district court to appoint counsel to represent a habeas
petitioner whenever "the court determines that the interests of
justice so require" and such person is financially unable to obtain
representation. The decision to appoint counsel is within the
discretion of the district court. See Chaney v. Lewis, 801 F.2d
1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v.
Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made
appointment of counsel the exception rather than the rule by

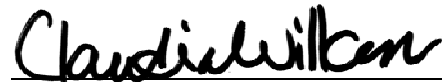
1 limiting it to: (1) capital cases; (2) cases that turn on
2 substantial and complex procedural, legal or mixed legal and
3 factual questions; (3) cases involving uneducated or mentally or
4 physically impaired petitioners; (4) cases likely to require the
5 assistance of experts either in framing or in trying the claims;
6 (5) cases in which petitioner is in no position to investigate
7 crucial facts; and (6) factually complex cases. See generally 1 J.
8 Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure
9 § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
10 when the circumstances of a particular case indicate that appointed
11 counsel is necessary to prevent due process violations. See
12 Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
13 Cir. 1965).

14 At this early stage of the proceedings the Court is unable to
15 determine whether the appointment of counsel is mandated for
16 Petitioner. Accordingly, the interests of justice do not require
17 appointment of counsel at this time, and Petitioner's request is
18 DENIED. This denial is without prejudice to the Court's sua sponte
19 reconsideration should the Court find an evidentiary hearing
20 necessary following consideration of the merits of Petitioner's
21 claims.

22 This Order terminates Docket no. 3.

23 IT IS SO ORDERED.

24 Dated: 7/22/08



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MILTON LEWIS JR,
Plaintiff,

Case Number: CV08-02337 CW

v.

CERTIFICATE OF SERVICE

ROBERT HOREL et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Milton J. Lewis T48953
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95531

Dated: July 22, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California